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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 141222999-5561-02]

RIN 0648-BE71

International Fisheries; Pacific Tuna Fisheries; 2015 and 2016 Commercial Fishing

Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing regulations under the Tuna Conventions Act to implement Resolution C-14-06 of the Inter-American Tropical Tuna Commission (IATTC or the Commission) by establishing limits on U.S. commercial catch of Pacific bluefin tuna from waters of the IATTC Convention Area for 2015 and 2016. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: The final rule is effective July 9, 2015.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Environmental Assessment, and other supporting documents are available via the Federal eRulemaking Portal:

<http://www.regulations.gov>, docket NOAA-NMFS-2014-0151, or contact with the Regional

Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, Celia.Barroso@noaa.gov, 562-432-1850.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2015, NMFS published a proposed rule in the **Federal Register** (80 FR 12375) to revise regulations at 50 CFR part 300, subpart C, to implement Resolution C-14-06, “Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean, 2015-2016.” This resolution was adopted by the IATTC at its 88th meeting in October 2014. The public comment period was open until April 8, 2015, and NMFS accepted public comment at a hearing held at the NMFS West Coast Region Long Beach office on March 26, 2015. Additionally, NMFS solicited public comment on the proposed trip limits, which are a new management tool in U.S. West Coast management of fisheries for Pacific bluefin tuna. The proposed trip limits were based on a recommendation from the Pacific Fishery Management Council (Council) at its November 2014 meeting.

The final rule is implemented under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), which directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate regulations as may be necessary to implement resolutions adopted by the IATTC. This authority has been delegated to NMFS.

The proposed rule contains additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations. Additional information on changes since the proposed rule is included below.

New Regulations

This final rule establishes catch limits for U.S. commercial vessels that catch Pacific bluefin tuna in the Convention Area (defined as the waters of the eastern Pacific Ocean (EPO)) for 2015 and 2016. Since 1998, conservation resolutions adopted by the IATTC have further defined the Convention Area as the area bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. In 2015, the catch limit for the entire U.S. fleet is 425 metric tons (mt) with an initial trip limit¹ of 25 mt per vessel. When NMFS anticipates that the total catch for the fleet has reached 375 mt, NMFS will impose a 2-mt trip limit for each vessel that will be in effect until the total catch for 2015 reaches 425 mt. For calendar year 2016, NMFS will announce the catch limit in a **Federal Register** notice; NMFS will calculate the 2016 catch limit to ensure compliance with Resolution C-14-06 (i.e., not to exceed 425 mt in either year and if catch exceeds 300 mt in 2015, then catch will be limited to 200 mt in 2016). The 2016 catch limit will be calculated as the remainder from the 2015 catch limit (i.e., how much of 425 mt was not caught) added to 175 mt, except as follows: 1) if 175 mt or less is caught in 2015, then the 2016 catch limit is 425 mt; 2) if greater than 300 mt and up to 400 mt are caught in 2015, then the catch limit in 2016 will be 200 mt; or 3) if greater than 425 mt is caught in 2015, then the catch limit in 2016 will be further reduced by the amount in excess of 425 mt (i.e., the remainder of the 600 mt limit for 2015-2016). The fishery in 2016 will also be subject to an initial 25-mt trip limit until catch is within 50 mt of the 2016 catch limit, after which a 2-mt trip limit will be imposed.

When NMFS determines that the catch limit is expected to be reached in 2015 or 2016 (based on landings receipts, data submitted in logbooks, and other available fishery information),

¹ This rule defines “trip limit” as the total allowable amount of a species by weight of fish that may be retained on board, transshipped, or landed during a single fishing trip.

NMFS will prohibit commercial fishing for, or retention of, Pacific bluefin tuna for the remainder of the calendar year. NMFS will publish a notice in the **Federal Register** announcing that the targeting, retaining, transshipping or landing for Pacific bluefin tuna will be prohibited on a specified effective date through the end of that calendar year. Upon that effective date, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area during the period specified in the announcement, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the effective date.

Catch Monitoring, Catch Limit Announcements

NMFS will provide updates on Pacific bluefin tuna catches in the Convention Area to the public via the IATTC listserv and the West Coast Region website:

http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html. Additionally, NMFS will report preliminary estimates of Pacific bluefin tuna catch

between monthly intervals if and when commercial catches approach the limits to help participants in the U.S. commercial fishery plan for the possibility of catch limits being reached.

NMFS will notify industry when catch approaches 250 mt in 2015.

In 2015, NMFS will publish up to two **Federal Register** notices after the final rule is issued, imposing inseason management measures. First, NMFS will publish a notice when the commercial 2-mt trip limit is imposed (i.e., catch is expected to reach 375 mt). Second, NMFS will publish a notice closing the entire commercial fishery when NMFS determines that the catch limit is expected to be met.

In 2016, NMFS will publish up to three notices in the **Federal Register**. The first notice will announce the 2016 catch limit. A second notice will announce the 2-mt trip limit, when NMFS determines that the commercial catch is expected to be within 50 mt of the catch limit. NMFS will publish a third notice in the **Federal Register** when NMFS determines that the catch limit is expected to be reached.

Public Comments and Responses

NMFS received eight written public comments and additional comments from attendees to a public hearing held on March 26, 2015, at the NMFS West Coast Region Long Beach office. Comments received were in regard to more than one aspect of the rule and some comments were very similar; therefore, NMFS is responding to the common themes/topics. The responses are summarized below. NMFS did not receive any comments objecting to the 2-mt trip limit when catch is within 50 mt of the catch limit in either 2015 or 2016. One commenter generally supported restrictions on commercial fishing and did not express support or objections to specific measures of the proposed rule.

Comments that were beyond the scope of this rulemaking are not addressed here. Nonetheless, some of those comments are valuable and NMFS will consider them for future management planning.

Comment 1: The rule should not include a trip limit (e.g., an initial 20-mt trip limit proposed), or should have a higher trip limit (e.g., up to 50 mt), because it will lead to discards. In support for this point, a commenter noted that a recent record of per trip catches from one vessel exceeded the proposed trip limit. The commenter also stated that fish in excess of the trip limit that are encircled and then released would not survive; therefore, the trip limits do not promote management measures to reduce fishing mortality. Additionally, the ability of vessel

operators to catch a small quantity is uncertain. If only large schools are present, the vessel operators may have to forgo catching Pacific bluefin tuna. A comment received at the public hearing also recommended a higher trip limit.

Response: NMFS agrees that an increase in the trip limit from 20 mt to 25 mt is warranted (for an explanation of the rationale, please see the next section, Changes from the Proposed Rule). NMFS anticipates that increasing the trip limit from the proposed 20 mt to 25 mt will reduce the potential for discards while still sufficiently reducing the rate of harvest to meet the management objectives of providing access to, without exceeding, the full catch limit. Increasing the trip limit beyond 25 mt would make monitoring and timely closure more difficult. Regarding mortality of released fish, other comments received suggest vessel operators could target smaller schools and fish could survive brailing operations. NMFS is unaware of any studies that refute this anecdotal information.

Comment 2: NMFS should adopt an initial trip limit (e.g., 20-mt trip limit) as proposed because it may alleviate derby-style fishing pressures and the potential for excess supply of Pacific bluefin tuna, and therefore, could make fishery more profitable. In particular, slowing the harvest rate could support development of a local fresh-frozen market for Pacific bluefin tuna in California, whereas large sets are only suitable for canning. Commenters also specifically supported 20 mt as the initial trip limit. The 20-mt trip limit is a good an inseason management tool to ensure that catch limits are not exceeded and reduce the potential for a fishery closure that could require discarding of incidentally caught PBF. A skilled purse seine captain can estimate the size of a set, and release fish alive during the brailing operation, if needed. One commenter suggested trip limits should only be imposed for the short-term, while the overall catch limit is so low.

Response: NMFS agrees that the initial trip limit (e.g., 20 mt) is a useful management tool in this situation. As explained in the Response to Comment 1, NMFS is implementing an initial trip limit of 25 mt, rather than 20 mt as originally proposed, to address concerns about discards; the higher trip limit is expected to meet the management objectives, including alleviating derby-style fishing pressure. Further, the 2-mt trip limit when catch is within 50 mt of the 2015 or 2016 limit is intended to prevent discards of incidentally caught PBF in non-directed fisheries (e.g. troll and line, drift gillnet). Additionally, the catch and trip limits in this rule are only applicable to 2015 and 2016. If the IATTC adopts subsequent resolutions on the conservation and management of Pacific bluefin tuna, NMFS will evaluate whether trip limits are appropriate management measures at that time.

Comment 3: Current monitoring and enforcement is inadequate to enforce catch and trip limits, and ensure the biennial catch limits are not exceeded. The proposed trip limit—NMFS assumes this refers to the 20-mt trip limit and not the 2-mt trip limit— incentivizes discards. Further, misreporting could undermine accurate estimates of fishing mortality. Vessel operators should be required to record discards to ensure that the United States does not exceed the catch limits. Without observer coverage, NMFS should estimate the portion of catch discarded dead and include it in the estimate of total U.S. catch of Pacific bluefin tuna. The fishery should be closely monitored to ensure the catch limit is not exceeded.

Response: NMFS acknowledges that monitoring and enforcement of trip limits can be a problem for fisheries management, but has determined that an initial trip limit of 25 mt can be adequately monitored and enforced. Vessel operators are required to fill out logbooks, which includes all catch, whether kept or returned to sea, and to submit the logbooks to NMFS within 30 days of each landing or transshipment (see 50 CFR 660.708). All catch, including discards,

will count toward the catch limits. NMFS intends to work closely with California Department of Fish and Wildlife (CDFW) and vessel operators, as it did in 2014, to monitor catches and landings to ensure limits are not exceeded. In 2014, NMFS received near real-time landings data from CDFW and vessel operators.

Comment 4: The proposed rule fails to address an objective in Resolution C-14-06 that only 50 percent of the total catch be comprised of fish less than 30 kilograms (kg). Furthermore, the United States should limit catches even further to 250 mt per year, a level comparable to the 30 percent reduction considered for the recreational fishery.

Response: Regarding size limits, C-14-06 establishes a goal, but not a requirement. NMFS is promulgating this rule in accordance with the requirements of Resolution C-14-06 with additional provisions (e.g., trip limits) to be able to effectively meet the requirements of the resolution (i.e., not exceeding catch limits). Resolution C-14-06 and this rule represent commercial catch reductions consistent with recommendations of the IATTC scientific staff (i.e., 20 to 45 percent) to aid in the rebuilding of the stock. More specifically, the catch limits in Resolution C-14-06 (i.e., an average of 300 mt per year) represent a 40 percent reduction from U.S. commercial catch limits in previous resolutions (i.e., 500 mt per year) on the conservation and management of Pacific bluefin tuna. Lastly, requiring that fishermen target and land larger fish (i.e., greater than 30 kg) could lead to discards, as well as additional harvest costs (e.g., search time for schools of larger fish).

General Comments not Within the Scope of the Rule: NMFS received several comments outside the scope of the proposed rule regarding: future negotiations tactics by the United States on Pacific bluefin tuna conservation and management measures in the Convention Area, recommendations for additional science needs, improvement of catch monitoring by requiring

daily communication between NMFS and vessel owners, requiring full retention of Pacific bluefin tuna, objections to the current catch limit as agreed to in Resolution C-14-06, and the effects of the current fishery conditions for other species targeted by the coastal purse seiners (i.e., sardines and market squid).

Response to General Comments not Within the Scope of the Rule: NMFS will take these comments and concerns into consideration when developing future positions at upcoming IATTC meetings, as well as developing scientific partnerships to address gaps in knowledge. Regarding daily communication between vessel operators and NMFS, there would be value in increased communication to more closely monitor the fishery. NMFS is considering developing a rule to require vessel operators to notify NMFS upon landing Pacific bluefin tuna. Nonetheless, NMFS will endeavor to promote better cooperation and communication with vessel operators to receive catch data at the time of landing. NMFS views the requirement to log all catches and a requirement to land all catch (i.e., full retention) as having the same goal: to account for all Pacific bluefin tuna caught by U.S. vessels. Vessel operators are currently required to log all catch, which would be counted toward the catch limit. As described in responses above, NMFS is implementing a higher than originally proposed trip limit to address concerns about discards. Regarding other target fisheries (e.g., sardines, market squid), at the time Resolution C-14-06 was adopted (October 2014), the U.S. delegation was unaware of the drastic reductions in the fishery for Pacific sardine that are being imposed because of the reduced biomass estimates. However, the United States would have nonetheless endeavored to make cuts consistent with IATTC scientific staff recommendations to aid in rebuilding of Pacific bluefin tuna.

Changes From the Proposed Rule

NMFS received a number of comments expressing concern about the potential for discards resulting from the proposal to set the initial trip limit each year at 20 mt. NMFS has concluded that a higher trip limit of 25 mt is warranted to reduce the potential for discards while still meeting the management objectives (e.g., inseason management). NMFS found that the average landing by a vessel from a trip targeting PBF during 2005 to 2014 was 30.6 mt (ranging from 0.04 mt to 75.8 mt; median is 29.2); 36 percent of these trips included landings up to 25 mt, whereas only 23 percent of the trips included landings up to 20 mt. NMFS concludes that increasing the trip limit to 25 mt will tend to reduce discards while still sufficiently reducing the rate of harvest to meet the objective of providing access to, without exceeding, the full catch limit. Consequently, NMFS is implementing trip limits as recommended by the Council, but increasing the level of the initial trip limit from 20 mt to 25 mt.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Tuna Conventions Act and other applicable laws.

This rule was determined to be not significant for purposes of Executive Order 12866.

Although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of-information requirements associated with the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) still apply. These requirements have been approved by the Office of Management and Budget under Control Number 0648-0204. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. This final rule contains a change in the trip limit that was published in the proposed action. As a result of public comments, the trip limit was increased from 20 mt to 25 mt. This change is anticipated to result in a minor economic benefit for impacted business entities. No comments were received regarding the certification. Therefore, the certification published with the proposed rule, that this rule is not expected to have a significant economic impact on a substantial number of small entities, is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for Fisheries has determined that the need to conserve Pacific bluefin tuna and comply with our international obligations constitutes good cause, under 5 U.S.C. 553(d)(3), to waive the requirement for a 30-day delay in effectiveness. Pacific bluefin tuna have migrated in significant numbers into waters off of southern California and commercial purse seine vessels have begun fishing for Pacific bluefin tuna off of the U.S West Coast. If the trip limits implemented by this rule were subject to the 30-day delay in effectiveness, and taking into account that a single trip could catch up to 75 mt, there is potential for a derby-style fishery that would result in exceeding the 425-mt catch limit for 2015 before this rule goes into effect. Although justification exists to waive the 30-day delay in effectiveness, NMFS is implementing a 7-day delay in effectiveness to provide sufficient time for any vessels currently operating to comply with the new regulations; vessels that target Pacific bluefin tuna typically complete their

fishing trips within one to two days. As soon as the rule is filed, notice will be sent to inform members of the tuna-fishing industry.

Therefore, to conserve Pacific bluefin tuna, which are overfished, and to remain in compliance with IATTC Resolution C-14-06, NMFS has determined that implementing these measures 7 days after filing with the Office of Federal Register is in the public's interest.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 1, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. In § 300.21, add the definition for “Trip limit” in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Trip limit means the total allowable amount of a species by weight of fish that may be retained on board, transshipped, or landed from a single fishing trip by a vessel that harvests tuna or tuna-like species.

* * * * *

3. In § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship or land Pacific bluefin tuna in contravention of §300.25(h)(3) and (5).

* * * * *

4. In § 300.25, revise paragraph (h) to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(h) *Pacific bluefin tuna commercial catch limits in the eastern Pacific Ocean for 2015-2016.* The following is applicable to the U.S. commercial fishery for Pacific bluefin tuna in the Convention Area in the years 2015 and 2016.

(1) For the calendar year 2015, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 425 metric tons in the Convention Area.

(2) In 2016, NMFS will publish a notice in the **Federal Register** announcing the 2016 catch limit. For the calendar year 2016, all commercial fishing vessels of the United States combined may capture, retain on board, transship, or land no more than the 2016 catch limit. The

2016 catch limit is calculated by adding any amount of the 425 metric ton catch limit that was not caught in 2015, as determined by NMFS, to 175 metric tons, except as follows:

(i) If 175 metric tons or less are caught in 2015, as determined by NMFS, then the 2016 catch limit is 425 metric tons;

(ii) If in 2015, greater than 300 metric tons and up to 400 metric tons are caught, as determined by NMFS, then the 2016 catch limit is 200 metric tons; or

(iii) If greater than 425 metric tons are caught in 2015, as determined by NMFS, then the 2016 catch limit is calculated by subtracting the amount caught in 2015 from 600 metric tons.

(3) In 2015 and 2016, a 25 metric ton trip limit will be in effect until NMFS anticipates that catch will be within 50 metric tons of the catch limits, after which a 2 metric ton trip limit will be in effect upon publication of a notice in the **Federal Register** by NMFS.

(4) After NMFS determines that the catch limits under paragraphs (h)(1) and (2) of this section are expected to be reached by a future date, NMFS will publish a fishing closure notice in the **Federal Register** announcing the effective date that additional targeting, retaining on board, transshipping or landing Pacific bluefin tuna in the Convention Area shall be prohibited as described in paragraph (h)(5) of this section.

(5) Beginning on the date announced in the fishing closure notice published under paragraph (h)(4) of this section through the end of the calendar year, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such Pacific

bluefin tuna is landed within 14 days after the effective date published in the fishing closure notice.

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